

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

JAMIE KOON,

Plaintiff,

v.

ERIC FINCH; CITY OF FORT
BENTON and DOES 1-10,

Defendants.

CV-16-104-GF-BMM-JTJ

ORDER

IT IS HEREBY ORDERED that counsel for the Plaintiff will file a motion for Writ of Habeas Corpus ad testificandum to the State custodian to have Jamie Koon brought to trial scheduled for February 12, 2018 . The United States Marshal Service cannot produce a prisoner for a civil proceeding, nor pay to house them. *See* United States Marshal Policy 11.7.D.3.e, which cites:

When a federal court seeks production of a state prisoner for testimony in a civil case in which the federal government is not a party, the court should direct the writ of habeas corpus to the prisoner's state custodian. The state custodian is responsible for production of its prisoner from the state institution, and this responsibility cannot be shifted by the federal court to the USMS (see *Pennsylvania Bureau of Corrections v. United States Marshals Service*, 474 U.S. 34 (1985)). Any court order to the contrary should be opposed. Furthermore, state authorities should retain custody of the prisoner within the federal courthouse and produce the prisoner each day directly before the court proceeding and house the prisoner for the duration of the proceeding. Although the U.S. Marshal may opt to permit state authorities to use a USMS cellblock, the state remains

responsible for its prisoner. While the federal court may have some discretion to order the USMS to guard the prisoner during the proceedings, the principal responsibility in this area should lie with the state custodian throughout the prisoner's production in court. At the conclusion of the proceeding, state authorities are responsible for returning the prisoner to his or her custodian. The U.S. Marshal should not permit a state prisoner to be housed in a federally contracted local jail facility at the expense of the USMS in such cases."

DATED this 23rd day of January, 2018.



Brian Morris
United States District Court Judge